

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

Aug 23

DISPATCHED BY

MM Docket No. 93-212

In the Matter of

Amendment of Section 76.51
of the Commission's Rules
to Include Goldsboro, North Carolina
in the Raleigh-Durham, North Carolina
Television Market

REPORT AND ORDER

Adopted: July 28, 1994;

Released: August 22, 1994

By the Chief, Cable Services Bureau:

1. Before the Commission is the *Notice of Proposed Rule Making* in the captioned proceeding,¹ issued in response to a petition filed by Group H Broadcasting Corporation ("Group H"), licensee of television station WYED(TV), channel 17, Goldsboro, North Carolina. The *Notice* proposed to amend Section 76.51 of the Commission's Rules,² to change the designation of the Raleigh-Durham, North Carolina, television market to "Raleigh-Durham-Goldsboro, North Carolina." Comments in support of this proposal were filed by Group H. Comments in opposition to the proposal were filed by: 1) Cablevision Industries Corp. ("CVI"), an operator of cable television systems within the Raleigh-Durham market including systems in Carrboro and Hillsborough, North Carolina; and 2) WITN-TV, Inc., licensee of WITN-TV, Washington, North Carolina.³

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine the scope of territorial exclusivity rights that television broadcast station may purchase and helps define the scope of compulsory copyright license liability for cable operators.⁴ Certain cable television syndicated exclusivity and network nonduplication rights are also determined by the presence of broadcast station

communities of license on this list.⁵ Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.⁶ Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.⁷

3. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),⁸ which amended Section 614 of the Communications Act of 1934, as amended ("Act"),⁹ requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules.¹⁰

RULE MAKING COMMENTS

4. According to the Group H, the stations in Raleigh, Durham, and Goldsboro serve substantially the same areas due to the proximity of their transmitter locations and, in particular, the signal of WYED covers substantially all of the communities served by WTVD, WRAL-TV, WLFL-TV and WRDC-TV which are licensed to Raleigh or Durham. The transmitter of WYED is said to be within 7 miles of the transmitters of three of the four stations licensed to Raleigh or Durham and Arbitron, cable systems, newspaper television listings, viewers and advertisers all treat the communities as comprising one market. Inclusion of Goldsboro within the market, it is argued, is essential to the continued viability of WYED and will correct an inequity in the application of the copyright compulsory license rules.

5. WITN-TV, in opposition, argues that no public benefit would result from the change and that the copyright matter could be resolved by the station obtaining "significantly viewed" status in the areas in question. WYED, it is noted, already has must-carry status throughout the Raleigh-Durham "area of dominant influence."¹¹ Group H's request is also challenged for having included no showing that there is any distinct benefit provided by its programming that is not already provided by the existing stations that now serve Goldsboro.

6. Finally, it is claimed that redesignation of the market as requested would result in significant harm to the viewing public by enabling the Raleigh and Durham stations to extend the reach of their syndicated exclusivity and network nonduplication rights into substantial portions of the Greenville-Washington-New Bern, North Carolina market. This, it is said, would result in disruption to existing ser-

¹ 8 FCC Rcd 4780 (1993).

² 47 C.F.R. §76.51.

³ An opposition filed by Capitol Broadcasting Company, licensee of WRAL-TV, Raleigh, North Carolina and Delta Broadcasting, Inc., licensee of WKFT-TV, Fayetteville, North Carolina was subsequently withdrawn.

⁴ See 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f).

⁵ See 47 C.F.R. Part 76, subpart F.

⁶ See CATV-Non Network Agreements, 46 FCC 2d 892, 898 (1974).

⁷ *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

⁸ Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁹ 47 U.S.C. §614.

¹⁰ See Section 614(f) of the Act.

¹¹ Each county in the contiguous United States is assigned by the Arbitron audience rating service to one "area of dominant influence" or "ADI" based on patterns of television viewing in the county. The "must-carry" rules make use of ADIs to determine carriage rights. *Report and Order in Docket 92-259*, 8 FCC Rcd 2965, para. 37 (1993).

vice of cable subscribers since stations in the Greenville market may well have duplicating portions of their signals blacked out.

7. CVI, in its opposition, notes that Raleigh is 51 miles from Goldsboro and Durham is approximately 74 miles from Goldsboro and the headend of CVI's system in Carrboro is 73 miles from Goldsboro and that the community of Hillsborough, served from the same headend is approximately 86 miles from Goldsboro. These distances are said to exceed the distances involved in other market hyphenation cases¹² and to militate against the proposed change. Redesignation of the market, it is said, will force CVI to remove a channel that subscribers value and replace it with WYED. Because of this CVI urges that the criteria used for the modification of "area of dominant influence" market areas¹³ are also relevant here and weigh against the change. Finally, CVI argues that the Commission should withhold action on this proposal until the Copyright Office rulemaking on whether Commission market redesignation will be followed for copyright purposes has been resolved.¹⁴

DISCUSSION

8. A "hyphenated market" has been described by the Commission as a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area.¹⁵ In evaluating past requests for hyphenation of a market, the Commission has considered the following as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area;¹⁶ (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change.¹⁷ Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."¹⁸

9. Based on the facts presented here, we believe that a case for redesignation of the subject market has been set forth so that this proposal should be adopted. It appears from the information before us that the television stations licensed to Raleigh, Durham, and Goldsboro do compete for programming, audience and advertisers throughout most of the proposed combined market area, and that sufficient evidence has been presented to demonstrate commonality between the proposed community to be added to the mar-

ket designation and the market as a whole. Although Goldsboro is 51 miles from Raleigh and 74 miles from Durham the transmitters are grouped together with four of the five stations licensed to the area having transmitters within seven miles of each other in what Group H describes as the de facto Raleigh-Durham antenna farm. There is no dispute that the coverage patterns of these stations cover common territory. Given that the stations in question compete for programming, audience and advertisers, the equalization of the regulatory status of WYED with stations in Raleigh and Durham through the inclusion of Goldsboro as a named community in the market should permit WYED to operate on an equal footing with the other stations in the market. Such a rationalization of the competitive situation appears to be the public benefit which Congress anticipated by instructing the Commission, in Section 614(f) of the Cable Television Consumer Protection and Competition Act of 1992, to make necessary revisions to update the market list.¹⁹

10. The arguments in opposition do not provide persuasive reason to either deny the proposed rule change or to continue to withhold action on it. While the Copyright Office has pending a proceeding in which the copyright consequences of rule changes of the type here involved are being reviewed, there is no reason why the two proceedings cannot proceed independently or why the Commission's determination to proceed with market changes of this type, as required by the 1992 Cable Act, should be reversed. Further, this proceeding is not intended to address the specific mandatory cable carriage, syndicated exclusivity or network nonduplication obligations of individual cable systems, including those operated by CVI in Carrboro or Hillsborough. Redesignation of the market reflects in the rules the general competitive situation that in fact exists in the local area, allowing the application of the more specific rules, including those relating to "area of dominant influence" changes, to be addressed from the perspective of a properly defined market area. Accordingly, the proposed rule change will be adopted.

11. Accordingly, IT IS ORDERED, that effective [30 days after publication in Federal Register], Section 76.51 of the Commission's Rules IS AMENDED to include Goldsboro, North Carolina, as follows:

Raleigh-Durham-Goldsboro, North Carolina

12. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

13. This action is taken by the Chief, Cable Services Bureau pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. §0.321

¹² Citing e. g., *Fresno-Visalia, California*, 57 R.R.2d 1122 (1985) (markets added in the redesignation of the Fresno market were 10, 30, and 35 miles from Fresno).

¹³ 47 U.S.C. § 534(H)(1)(C)(ii); *Report and Order in Docket* 92-259, 8 FCC Rcd 2965 (1993).

¹⁴ *Notice of Proposed Rule Making*, 58 Fed. Reg. 34594 (June 28, 1993).

¹⁵ *Cable Television Report and Order*, 36 FCC 2d 143, 176 (1972).

¹⁶ This concern -- that cable carriage might be provided in areas beyond a station's Grade B signal contour -- has reduced relevance under the must-carry rules included in the 1992 Cable Act which are based on "Area of Dominant Influence"

geographic market areas rather than on Grade B contours.

¹⁷ See e. g., *Fresno-Visalia, California*, 57 R.R. 2d 1122, 1124 (1985); *TV 14, Inc. (Rome, Georgia)*, 7 FCC Rcd 8591 (1992).

¹⁸ See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

¹⁹ CVI has suggested that the mileages between the communities here involved exceed those involved in other market hyphenation cases. This is clearly not correct. See *Orlando-Daytona Beach-Melbourne-Cocoa, Florida*, 57 R.R. 2d 685 (1985) (communities 48, 57, and 72 miles apart) and other situations cited by Group H in its reply comments at page 15.

FEDERAL COMMUNICATIONS COMMISSION

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